

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROLANDO HERNANDEZ,

Plaintiff,

v.

CITY OF VANCOUVER and MARK  
TANNINEN,

Defendants.

Case No. C04-5539 RBL

ORDER  
[Dkt. #148]

THIS MATTER is before the Court on Defendants' Renewed Motion to Compel *In Camera* Review and Production of Certain Documents from Attorney Gregory Ferguson's File. Dkt. #148. The Court has reviewed the requested documents *in camera* and determines, for the reasons noted below, that none are discoverable.

In 2004 Plaintiff sued Defendants, asserting claims based on racial discrimination and conspiracy under 42 U.S.C. § 1985. Plaintiff Hernandez was originally represented by Attorney Gregory Ferguson, who interviewed Defendant Mark Tanninen regarding Plaintiff's claims. At first, Tanninen was willing to sign a statement corroborating Hernandez's assertions, but later changed his mind. Attorney Ferguson withdrew from the case, realizing he might now be called as a witness to discuss Tanninen's original statements. Hernandez modified his claim to allege conspiracy against Tanninen and the City.

1 The City moved to compel all of Ferguson's notes and work product on the ground that since  
2 Hernandez was relying on Ferguson as a witness, the attorney-client privilege was waived. The District Court  
3 agreed. *See Hernandez v. City of Vancouver*, 2006 WL 2076568 (W.D. Wash. 2006). The Ninth Circuit  
4 issued a writ of mandamus to the district court's order, finding that it had erred in determining that all of  
5 Ferguson's file was discoverable. *Hernandez v. City of Vancouver*, 604 F.3d 1095, 1101 (9th Cir. 2010).  
6 The court ruled that only the parts of Ferguson's file that discussed his communications with Tanninen were  
7 discoverable, because Hernandez had waived attorney-client and work-product privilege as to this information  
8 but not to any other generalized attorney-client information not regarding Tanninen. *Id.* at 1102. The court  
9 advised the district court to reconsider its original order.

10 This Court granted Defendants' request to review the documents *in camera* and the Court has  
11 conducted a review of: HER 0893-916, 0922-2, 0925, 0932, 0935-48, 0950-61, and 1002-39. Under the  
12 standard articulated by the Ninth Circuit, none of the documents reviewed are discoverable because none of  
13 them relate to Attorney Ferguson's communications with or about Tanninen.

14 **IT IS SO ORDERED.**

15  
16 Dated this 10<sup>th</sup> day of December, 2010.

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19   
20 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE